

# MONO COUNTY PLANNING COMMISSION

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## SPECIAL MEETING MINUTES

**AUGUST 29, 2008**  
**(Adopted November 13, 2008)**

**Commissioners present:** Scott Bush, Dan Roberts, Paul Rowan, Steve Shipley. **Absent:** Sally Miller.

**Staff present:** Scott Burns, director; Greg Newbry & Gerry Le Francois, principal planners; Heather deBethizy, planning intern; Walt Lehmann & Garrett Higerd, public works; Allen Berrey, assistant county counsel; C.D. Ritter, commission secretary.

1. **CALL TO ORDER:** Vice-chair Scott Bush called the meeting to order at 10:06 a.m.
2. **PUBLIC COMMENT:** No items.
3. **MEETING MINUTES:** Adopt minutes of July 10, 2008. (Shipley/Roberts. Ayes: 3-0. Abstain due to absence: Bush. Absent: Miller.)

#### 4. PUBLIC HEARINGS:

**A. USE PERMIT 34-08-04/Verizon Wireless:** The proposal is to construct a 60' mono pole, with 12-panel antennas and two future microwave dishes contained in a simulated pine tree. The associated ground equipment, generator and a building would be located in a fenced lease area on APN 21-080-24 near the Tioga Gas Mart on U.S. 395 and S.R. 120, just south of Lee Vining. The General Plan designation is Specific Plan. In accordance with Section 15183 of the California Environmental Quality Act, a prior EIR is being used. *Staff: Greg Newbry*

Greg Newbry described this proposal as a replacement for one submitted several years ago by Sprint/Nextel. A six-foot-high chain-link fence would encircle the project, and a row of planted trees would mask the site. The Mono Lake Committee suggested scattering the trees. "Shaker Gray" is the preferred color for the mono pine. Newbry thought that a tree with irregular branches would look more realistic than the original rendering.

**OPEN PUBLIC HEARING:** Jillian Faria, Verizon rep, submitted a new application using the Sprint design and has been working to finalize the project. Many hours were spent designing the mono pine branches, she said. The structure is designed for at least one other carrier and would provide adequate hand-off for seamless coverage in the region. Newbry noted that microwave dishes would bring high-speed Internet capability.

Tony Dublino, news reporter, asked whether the proposed structure conformed to the Highway 395 Scenic Guidelines. Newbry indicated that close conformity to the guidelines led to requiring a mono pine with approved dark colors and landscaping. **CLOSE PUBLIC HEARING.**

**MOTION:** Approve Use Permit 34-08-04 as presented (Shipley/Rowan. Ayes: 4-0. Absent: Miller.), with additions to:

1) Condition #5: "The design, color and building materials for equipment structures shall be Shaker Gray (Sherwin-Williams DE6231)."

2) Condition #11: "Indigenous trees/shrubs shall be relocated on different areas of the slope to reflect a natural look. Additional trees/shrubs shall be added that will grow to at least 8 feet in height. Community Development shall be consulted for approval on site for mound creation and tree placement as well as type and size."

DISTRICT #1  
COMMISSIONER  
Paul Rowan

DISTRICT #2  
COMMISSIONER  
Steve Shipley

DISTRICT #3  
COMMISSIONER  
Daniel Roberts

DISTRICT #4  
COMMISSIONER  
Scott Bush

DISTRICT #5  
COMMISSIONER  
Sally Miller

3) Condition #17: "Applicant shall submit three or four each of the green and brown slats for on-site review. Community Development shall determine which color is approved for use."

**B. USE PERMIT 34-08-05/Hess:** The proposal is to operate a bed-and-breakfast establishment in an existing single-family residence (APN 21-144-01) at 560 Lee Vining Ave. on the west side of Lee Vining, one block off U.S. 395. The project qualifies as a Class III, 15303 Categorical Exemption for new construction or conversion of small structures. *Staff: Greg Newbry*

Greg Newbry received no opposition from neighbors, and described the property as neat and well-maintained. Four paved parking spots exist, and a fifth could be added. In response to Commissioner Rowan's query about smoke detectors, applicant Vineca Hess confirmed three existing detectors. The establishment must conform to Environmental Health standards.

**OPEN PUBLIC HEARING:** No comments. **CLOSE PUBLIC HEARING.**

**MOTION:** Approve Use Permit 34-08-05 as presented. (Rowan/Shipley. Ayes: 4-0. Absent: Miller.)

**C. USE PERMIT 34-08-06/Lofgren:** The proposal is to construct three units (one duplex and one single unit) on APNs 15-140-47 and -48. A merger/lot line adjustment being processed will place the project on one parcel instead of two. The properties are located on State Route 158 and Gull Lake Drive in the community of June Lake. The General Plan designation for the parcels is CL-H. In accordance with Section 15183 of the California Environmental Quality Act, a prior EIR is being used. *Staff: Greg Newbry*

Greg Newbry reviewed the project and presented a scale model of the proposed structure. He relayed that resident Jane Escoto had expressed concern about road steepness and icy conditions in winter. A grading permit is not included in the approval sought today, so the Department of Public Works ought to get involved. The DPW wants a better definition of the trail and how it's aligned. The trail is designed to weave around trees and could be used by the community. Steepness needs to flatten so plows don't take out part of the driveway during snow removal.

Newbry noted that applicant Carlton Lofgren, who was present, saved lots of trees front and back. The scale model showed the structure as well as existing trees. Staff had no issues with the project except to pacify DPW with ingress/egress on Gull Lake Drive. According to Newbry, reduced density is proposed for the site, so it's a good project for the June Lake community.

**OPEN PUBLIC HEARING:** No comments. **CLOSE PUBLIC HEARING.**

**DISCUSSION:** Commissioner Roberts said the project conforms to the June Lake Design Guidelines, and, when presented to the Citizens Advisory Committee, was well received.

**MOTION:** Approve Use Permit 34-08-06 as presented. (Roberts/Shipley. Ayes: 4-0. Absent: Miller.)

**D. APPEAL OF PARCEL MAP 35-34/Watterson Meadow:** The proponent is appealing the Planning Division's decision to require an Environmental Impact Report instead of a mitigated Negative Declaration. Appellants contend the EIR is unnecessary, as all pertinent facts are on the table, and no additional information would be obtained through a costly EIR that would not be obtained via a Negative Declaration. *Staff: Gerry Le Francois*

Gerry Le Francois cited this as the first appeal of a planning determination in his 14 years tenure. In the Initial Study of the project staff determined that an EIR was required because of: 1) biological resources on the property; 2) water resources required for a rare plant; and 3) archaeological resources. Wherever mountains or deserts intersect water resources, sensitive-species habitats or unique environments tend to occur. The meadow area is still wet and marshy, as shown in photos, and a large hill sits at the center of the site. This area has the second known occurrence of a

particular species in Mono County, the Inyo County Star Tulip (*Calochortus excavatus*), and the largest known population in the area. Staff has been clear on the EIR requirement for some time.

The appellants hired their own consultants to conduct supplemental wildlife and botanical studies, but the studies have not been peer-reviewed by Mono County. Mono County requires all environmental studies to be prepared by and for Mono County.

**OPEN PUBLIC HEARING:** Appellant Dale Mancino reminded that the intent of CEQA is to identify resources and avoid impacts. The appellants claimed to have preserved 250 acres in a conservation easement, and proposed only 4-acre disturbance on 40-acre parcels. They identified and avoided sensitive issues. According to Mancino, planning staff made its decision without using or acknowledging the scientific data provided. Staff also approved the Patel project up the road using completely different standards. Patel got a CEQA Guidelines section 15183 bypass, hence providing the main reason for appealing the Watterson Meadow decision.

Appellant Jerry Geller brought up the scoping meeting Oct. 1, 2007, and planning staff's subsequent use of outdated information from DFG and Lahontan Regional Water Quality Control Board (2006). According to Le Francois, responsible agencies were invited to the scoping meeting and used the map provided. Geller indicated he was upset that planning staff had not asked for agency comments after the map was revised.

Mancino read aloud a letter from Lahontan indicating the revised project addressed prior concerns and warranted no further comment. He also noted that Debra Hawk, DFG, had indicated her intention to submit a letter stating an EIR is no longer required. He contended that, in contrast to current pilfering of prehistoric sites and no fencing except cattle fences, project development and a conservation easement would preserve archaeology. NOTE: The appellants presented no evidence on who a conservation easement would go to and/or who would monitor.

Mancino indicated that consultant Resource Concepts, hired by the appellants, found no sign of badger or pygmy rabbit and described the site as poor sage grouse habitat. Mancino also relayed that only one willow flycatcher was found north of the property. A large flycatcher area is two to three miles away.

The aforementioned Patel project did a biological walk-through Dec. 30, 2006, but conditions were not stated. "How could an evaluation be based on one walk-through with no scat"? Mancino queried. No evidence of mule deer or sage grouse was found, and migratory birds couldn't be studied in December.

Mancino emphasized that Watterson Meadow would conserve biology, place sensitive species in a conservation easement, and designate 4-acre building envelopes outside sensitive areas. **CLOSE PUBLIC HEARING.**

**DISCUSSION:** Allen Berrey explained that, as with most planning matters, the appeal before the commission involves an intersection of law and the facts. As to the law, an EIR may be dispensed with only if no substantial evidence of potential significant environmental effects is found. This means there is a low threshold for EIR preparation. When competing opinions on resources and impacts exist, it's not a matter of deciding who is right, but whether either opinion constitutes substantial evidence of the project's potential significant impacts. If a proposed project *may* have a significant effect, an EIR must be prepared. A Negative Declaration must conclude all impacts have been identified and mitigated. Too many unknowns exist [on Watterson Meadow] for a Negative Declaration.

Gerry Le Francois pointed out that the referenced Patel property is farther north, with no surface water or sensitive habitat on site. As the lead agency, Mono County – not the proponent – hires a contractor to conduct an impartial study. While valid, other studies will not be accepted without peer review. Issues, including money, have existed on the project for several years.

Commissioner Bush wondered how to accomplish peer review without having studies redone. Could studies be supplemented by going to the same sources? Le Francois explained that a third party would review the studies for adequacy.

Commissioner Shipley wondered why an EIR was rejected by the appellants. Cost? Considered unnecessary? Listening to counsel set the tone, Shipley concluded that even if there is *potential* disturbance, CEQA Guidelines say an EIR must be prepared. He commented that consultants hired by private parties often present biased studies.

Le Francois cited aesthetics and noted that disturbance of archaeological, hydrological, and botanical resources by building envelopes, new fire-safe standards and roads depends on their location. He indicated that while other agencies might be OK with the project, Mono County has ultimate responsibility as the lead agency to determine whether an EIR would be required. The impact of seven wells on meadows is unknown.

Geller said they'd reduced the actual value of the property in order to avoid potential significant impacts. "How would an EIR determine anything good or bad?" he asked. Staff CEQA expert Larry Johnston had concluded that too many unknowns and significant issues exist to not require an EIR. Staff would contend it may not be able to recommend certification of a lower level of environmental review.

Berrey indicated that once a decision of Negative Declaration is made, the fair argument test would no longer apply, and an EIR could be required later only under limited circumstances. The EIR threshold is low due to CEQA's policy of thoroughly studying and analyzing potential impacts. CEQA wants decision-makers to know as much as possible about potential impacts, so when a decision is made, impacts are adequately addressed. "Only in cases where the potential impacts are known with a high degree of certainty can [an agency] 'righteously' avoid preparing an EIR on the grounds that mitigation has been imposed that will reduce those impacts to a level of insignificance. CEQA is designed to minimize uncertainty. It subverts the CEQA process to not find out ahead of time," he said.

Commissioner Roberts had noticed in the commission packet a USFS letter of intent for a land exchange with Mammoth Mountain, which would imply that the site is unique and sensitive. Appellant Geller indicated this was no longer the plan.

**MOTION:** Deny the appeal based on information from staff and county counsel. "The parcel is as environmentally sensitive as you get," Commissioner Shipley said. (Shipley/Roberts. Ayes: Shipley, Roberts. Noes: Bush, Rowan. Absent: Miller.)

**DISCUSSION:** Commissioner Bush thought that if the appellants had not done all their work, or if it were anything larger, he would agree, but they had tried to avoid triggering an EIR and came well prepared.

Allen Berrey noted the burden was on appellants to "win," but the Planning Commission vote was a tie, which under the circumstances would allow them to appeal the decision to the Mono Supervisors within 15 days.

**E. TENTATIVE PARCEL MAP 37-188/Maddock:** The proposal is to divide a 26-acre parcel (APN 25-200-52) into lots of 12.4 and 13.9 acres. The property is located on Dawson Ranch Road in Hammil Valley. The General Plan designation is Rural Residential with a 10-acre minimum parcel size (RR 10). In accordance with Section 15183 of the California Environmental Quality Act Guidelines, a prior EIR is being used. *Staff: Gerry Le Francois*

Gerry Le Francois reviewed the proposed project. The site is located within a 100-year floodplain. One development credit would go to the existing house and the other to the new parcel. The drainage area is known as Spring Canyon Creek.

**OPEN PUBLIC HEARING:** Andy Holmes, Triad/Holmes Associates, indicated no major problem with the project. A driveway is located within 75', so the proponent would not have to rebuild it.

Garrett Higerd indicated Public Works has no problem with the driveway. **CLOSE PUBLIC HEARING.**

**MOTION:** Approve Tentative Parcel Map 37-188 as amended (Shipley/Rowan. Ayes: 4-0. Absent: Miller.):

- 1) Condition #24: Mono County puts the burden on the proponent, not a future owner.
- 2) Condition #40: Minimum net **gross**.

**5. WORKSHOP:** No items.

**6. REPORTS:**

**A. DIRECTOR:** Rodeo Grounds: The final design review meeting next Tuesday will include a scale model of the proposed development and proposed recommendations. The project will then move on to consultants, the Planning Commission, and ultimately the Mono Supervisors. A draft document for public review should be released by autumn. 2) Rock Creek Ranch/C&L Development: Review of the 60-unit project closes Sept. 8. 3) Rock Creek Canyon/Hooper: A public scoping meeting on the former Paradise Lodge site was held Aug. 18. 4) Benton Visioning: The RPAC next week will conclude its Visioning Process with results from consultants. It's very positive and forward-looking, and likely will go to Planning Commission next year as a General Plan Amendment. 5) Planning Commission budget: Funding for conferences is available. 6) Meeting Guidelines: Commissioners reviewed the proposed language and suggested a handout for attendees, stating: "In a long meeting with many comments on a project, limit comments to new information." Allen Berrey recommended scheduling adoption of the guidelines on the Oct. 9 agenda, as First Amendment and Brown Act issues might arise.

**B. PLANNING COMMISSIONERS:** Commissioner Bush indicated that his conflict between work and Thursday meetings has been resolved, so he can remain on commission.

**7. CORRESPONDENCE (Informational):** Comment letter dated July 30, 2008, on June Lake Rodeo Grounds Design Review.

**8. ADJOURN** at 12:13 p.m. to October 9, 2008.

**NOTE:** *The August 29 meeting was held in lieu of regularly scheduled meetings August 14 and September 11, 2008.*

Respectfully submitted,  
C.D. Ritter, commission secretary